

In the Court of Appeals of the State of Alaska

Estate of Andrew J. Dayton,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13466**

Order Dismissing Appeal

Date of Order: **December 15, 2021**

Trial Court Case No. **4FA-98-02438CR**

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges

This Court issued an order inviting the Estate of Andrew J. Dayton to file a pleading explaining why this appeal remains a live controversy and is not moot. In response, the Estate does not dispute that this appeal — from an order revoking Dayton’s probation — is moot.¹ Rather, the Estate argues that we should consider the appeal under the public interest exception to the mootness doctrine. The State opposes application of the public interest exception under the facts of this case.

The public interest exception to the mootness doctrine provides that a court may resolve an otherwise moot issue “when the issue is one of public interest which is capable of repetition and may repeatedly circumvent review.”² None of the three factors — the importance of the issue to the public interest, the possibility of repetition, or the

¹ As we noted in our last order, Dayton did not appeal the judgment in his criminal case; he only appealed his probation revocation.

² *State v. Roberts*, 999 P.2d 151, 153 (Alaska App. 2000).

likelihood of evading review — is dispositive, and the determination of whether to apply the exception to review a moot question is left to the discretion of the court.³

As an initial matter, we question whether the issue presented by this case merits consideration under the public interest exception, particularly given the record before us. On appeal, Dayton argues that his guilty plea to second-degree failure to register, and his accompanying admission to violating his probation, were taken in violation of due process because the superior court did not specifically advise him that his admissions could be relied on by the parole board to revoke his parole. But Dayton’s attorney did not raise this claim in the trial court. Nor did Dayton’s attorney create a record establishing that Dayton’s parole was revoked, or that it was revoked following the change of plea hearing based on the same conduct that he admitted at that hearing.

Moreover, even assuming that this is an issue of law — *i.e.*, that Dayton could argue for the first time on appeal that the judge had a legal obligation to advise him that his admissions could have consequences for his parole status — we note that there is no criminal rule or statute that requires a court to inform a defendant of the potential parole consequences of a guilty plea or admission.⁴ Thus, to succeed in this appeal, Dayton must show that a trial court has a constitutional obligation, during a plea colloquy, to advise a defendant of potential parole consequences.

³ *Id.* (quoting *Krohn v. State Dep’t of Fish and Game*, 938 P.2d 1019, 1021 (Alaska 1997)).

⁴ *See generally* Alaska R. Crim. P. 11.

As a general matter, trial courts do not need to inform defendants of the potential *collateral* consequences of their guilty pleas.⁵ Collateral consequences are those that “originat[e] outside of the trial court,”⁶ and would seemingly include the use of a defendant’s guilty plea or admission in a separate parole proceeding.⁷ In such cases, because defense counsel is much better equipped to know the specific risks faced by their client, it is “defense counsel [who is] expected to discuss with his client the range of risks attendant his plea.”⁸ Here, Dayton was represented by counsel in the trial court.

⁵ *Peterson v. State*, 988 P.2d 109, 115 (Alaska App. 1999) (“A plea meets the standards of due process even though the defendant is not ‘informed about every conceivable collateral effect the conviction might have.’” (quoting *Tafoya v. State*, 500 P.2d 247, 250 (Alaska 1972))); *see also* *Bargas v. Burns*, 179 F.3d 1207, 1216 (9th Cir. 1999) (citing *United States v. Wills*, 881 F.2d 823, 825 (9th Cir. 1989)) (explaining that the court “only will find a due process violation where the trial court failed to inform a defendant of the direct consequences of his plea, as opposed to the collateral consequences”); 5 Wayne R. LaFave, *Criminal Procedure* § 21.4(d), at 979 (4th ed. 2015).

⁶ *Limani v. State*, 880 P.2d 1065, 1067 (Alaska App. 1994).

⁷ *See Sanchez v. United States*, 572 F.2d 210, 211 (9th Cir. 1977) (holding that “revocation of parole is a collateral rather than a direct consequence of a defendant’s guilty plea,” and therefore the trial court was not required to notify the defendant that his guilty plea could result in parole revocation); LaFave, *supra* note 5, at 989 & n.137 (stating that “collateral consequences . . . include such matters as the possible evidentiary use of the defendant’s plea in later proceedings,” and collecting cases).

⁸ LaFave, *supra* note 5, at 995-96; *cf. Wilson v. State*, 244 P.3d 535, 538-39 (Alaska App. 2010) (holding that the defendant set out a *prima facie* case of ineffective assistance of counsel when he alleged (1) that his attorney gave him incorrect advice regarding the effect of a no-contest plea on civil liability, and (2) that he would not have entered the no-contest plea if he had been aware that the plea would prejudice him in defending the civil case).

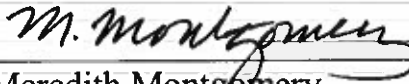
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But even assuming the issue raised in this case is one of public import, we agree with the State that the issues raised, while capable of repetition, are not likely to repeatedly evade review by application of the mootness doctrine. While defendants are often on probation and parole, as the Appellant notes, they can pursue the validity of any pleas or admissions made under similar circumstances in future cases.

For these reasons, we decline to apply the public interest exception to this case and therefore dismiss Dayton's appeal as moot.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Court of Appeals Judges
Judge Christian
Trial Court Clerk
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